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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MICHAEL S. WAMPOLD and DINA
9 L. WAMPOLD, husband and wife and
the marital community composed
thereof,

10 Plaintiffs,

11 v.

12 SAFECO INSURANCE COMPANY
13 OF AMERICA, a non-Washington
Corporation,

14 Defendant.

C19-169 TSZ

MINUTE ORDER

15 The following Minute Order is made by direction of the Court, the Honorable
16 Thomas S. Zilly, United States District Judge:

17 (1) The Motion to Exclude Expert Testimony, docket no. 49, brought by
18 Defendant Safeco Insurance Company of America (“Safeco”) is GRANTED in part,
19 DENIED in part, and DEFERRED in part as follows: Thomas Lether is a qualified expert
20 on insurance-handling and bad faith issues and his opinions may be helpful to the jury.
21 See Fed. R. Evid. 702. The Court will permit him to testify at trial on Safeco’s claims-
22 handling procedures consistent with his expert report dated August 16, 2019, docket no.
23 30-1. Safeco’s objections go largely to the weight of the evidence, and it will have an
opportunity to challenge Lether’s opinions during cross-examination. See United
States v. L.E. Cooke Co., 991 F.2d 336, 342 (6th Cir. 1993) (concluding that “any
weaknesses in the factual basis of an expert witness’ opinion, including unfamiliarity
with standards, bear on the weight of the evidence rather than on its admissibility”). The
Court DEFERS to the Pretrial Conference a ruling relating to any requests or statements

1 made during the mediation in the Leong v. Wampold matter, which may not have been
2 related to the underlying dispute. Compare Mut. of Enumclaw v. Cornhusker Cas. Ins.
3 Co., No. CV-07-3101-FVS, 2008 WL 4330313, at *3 (E.D. Wash. Sept. 16, 2008) with
4 W. & Clay, LLC v. Landmark Am. Ins. Co., No. C09-1423 MJP, 2010 WL 1881880, at
5 *1 (W.D. Wash. May 10, 2010). The Court also notes that “instructing the jury as to the
6 applicable law ‘is the distinct and exclusive province’ of the court.” Hangarter v.
7 Provident Life and Acc. Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004). The Court will
8 allow Lether to testify concerning the standard of care for insurers but will not allow him
9 to opine on an issue of law. The Court DEFERS all other objections to specific
10 testimony to trial.

11 (2) The Court DEFERS ruling on Safeco’s Motion for Summary Judgment,
12 docket no. 48, and DIRECTS Plaintiffs Michael and Dina Wampold to file a detailed list
13 of the nature and amount of any actual damages incurred from the alleged harm for
14 purposes of their bad faith, negligence, and Consumer Protection Act (“CPA”) claims.
15 See Coventry Assoc. v. Am. States Ins. Co., 961 P.2d 933, 938 (Wash. 1998) (holding
16 that courts do not presume harm based on an insurer’s bad faith or CPA violation). The
17 Wampolds shall also separately designate the nature and amount of any injury to their
18 “business or property” for purposes of their CPA claim. To the extent the Wampolds
19 claim attorneys’ fees, they should provide the attorney’s name, the date, and the amount
20 of time, and the nature of the services rendered. The Court has reviewed the Declaration
21 of Michael S. Wampold, docket no. 29, relied on at page 14 of the Opposition, docket no.
22 50, and concludes the declaration does not provide the Court with a sufficient record of
23 damages.

1 (3) The Wampolds’ response to this Minute Order shall be filed by May 14,
2 2021. No response by Safeco shall be filed unless requested by the Court. The Motion
3 for Summary Judgment is RENOTED to May 14, 2021.

4 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
5 record.

6 Dated this 29th day of April, 2021.

7 William M. McCool
8 Clerk

9 s/Gail Glass
10 Deputy Clerk